



**Billing Code**

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[Docket No. FWS–R4–ES–2018–0035; FXES11130400000-212-FF04E00000]**

**RIN 1018-BB98**

### **Endangered and Threatened Wildlife and Plants; Replacement of the Regulations for the Nonessential Experimental Population of Red Wolves in Northeastern North Carolina**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule to replace the existing regulations governing the North Carolina nonessential experimental population designation of the red wolf (*Canis rufus*) under section 10(j) of the Endangered Species Act (Act), as amended. Based on recent court decisions involving the North Carolina nonessential experimental population designation of the red wolf (NC NEP), having considered the public comments submitted in response to the proposed rule, and upon further consideration of the proposal, we have determined that withdrawing the proposed rule is the best course of action at this time. The NC NEP will be managed under the provisions of the existing regulations and as informed by relevant court orders.

**DATES:** The U.S. Fish and Wildlife Service is withdrawing the proposed rule published on June 28, 2018 (83 FR 30382), as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** This withdrawal of the proposed rule and supporting documents are available on the Internet at <https://www.regulations.gov> at Docket No. FWS–R4–ES–2018–0035.

**FOR FURTHER INFORMATION CONTACT:** Pete Benjamin, Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office, 551F Pylon Drive, Raleigh, NC

27606; telephone 919–856–4520; or facsimile 919–856–4556. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339.

## **SUPPLEMENTARY INFORMATION:**

### **Previous Federal Actions**

Please refer to our June 28, 2018, proposed rule (83 FR 30382) for a detailed description of previous Federal actions concerning the red wolf.

#### *Service Actions*

On April 24, 2018, the Service completed a species status assessment (SSA) and 5-year status review for the red wolf. The SSA represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the red wolf. The SSA can be found on the Southeast Region website at <https://www.fws.gov/southeast/wildlife/mammals/red-wolf/> and at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2018–0035. In the 5-year status review, we determined that the species continues to meet the definition of an endangered species, as defined under section 3 of the Act (16 U.S.C. 1531 *et seq.*), and did not recommend a change in status. The 5-year review is available at [https://ecos.fws.gov/docs/five\\_year\\_review/doc5714.pdf](https://ecos.fws.gov/docs/five_year_review/doc5714.pdf).

On June 28, 2018, we published in the *Federal Register* (83 FR 30382) a proposed rule to replace the existing regulations governing the NC NEP, which were codified in 1995 (see 60 FR 18940; April 13, 1995), in title 50 of the Code of Federal Regulations (CFR) at § 17.84(c) (50 CFR 17.84(c)). In the June 28, 2018, proposed rule, we made available a draft environmental assessment for the proposed regulations, and we opened a 30-day comment period, which ended July 30, 2018. On July 10, 2018, we held a public information session and public hearing on the proposed rule and draft environmental assessment. On August 13, 2018, we published in the *Federal Register* (83 FR 39979) a document reopening the proposed rule’s comment period for

another 15 days to allow the public an additional opportunity to review and comment on the proposed rule and draft environmental assessment.

### *Legal Actions*

On November 12, 2015, Southern Environmental Law Center, on behalf of Red Wolf Coalition, Defenders of Wildlife, and the Animal Welfare Institute (plaintiffs), filed a complaint challenging the Service's management of the NC NEP, alleging, in part, that we violated section 9 of the Act by authorizing take of red wolves by private landowners without satisfying the requirements of 50 CFR 17.84(c)(4)(v). On September 28, 2016, the U.S. District Court for the Eastern District of North Carolina (Court) issued a preliminary injunction prohibiting the take of red wolves either directly or by landowner authorization, pursuant to 50 CFR 17.84(c)(4)(v) and (c)(10), without first demonstrating that the red wolf is a threat to human safety or the safety of livestock (see *Red Wolf Coal v. United States Fish & Wildlife Serv.*, 210 F. Supp. 3d 796 (E.D.N.C. 2016)). On November 4, 2018, the Court permanently enjoined the Service from taking red wolves either directly or by landowner authorization, pursuant to 50 CFR 17.84(c)(4)(v) and (c)(10) without first demonstrating that such red wolves are a threat to human safety or the safety of livestock or pets (see *Red Wolf Coal v. United States Fish & Wildlife Serv.*, 346 F. Supp. 3d 802 (E.D.N.C. 2018)). At that time, we announced that we would evaluate the implications of the Court's decision on the June 28, 2018, proposed rule.

On November 16, 2020, plaintiffs filed a complaint against the Service alleging violations of the Act and of the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) in connection with management of the NC NEP. Specifically, they alleged that the Service interpreted its existing regulations at 50 CFR 17.84(c) as prohibiting additional releases of captive red wolves into the NC NEP and prohibiting implementation of the Red Wolf Adaptive Management Work Plan (RWAMWP) and that this interpretation constituted a new policy that was adopted in contravention of the Act and the APA. Shortly after filing the suit, plaintiffs filed a motion for preliminary injunction to require the Service to release red wolves from captivity

and reinstate the use of the RWAMWP. On January 22, 2021, the Court granted plaintiffs' motion for preliminary injunction determining that plaintiffs were likely to succeed on the merits of their claims that the Service adopted a policy preventing the Service from releasing captive red wolves into the NC NEP in violation of the Act and the APA. The Court's injunction barred the Service from effecting this policy and ordered the Service to develop a plan to release red wolves into the NC NEP and submit the plan to the Court by March 1, 2021 (see *Red Wolf Coalition v. U.S. Fish and Wildlife Service* (No. 2:20-CV-75-BO) (January 22, 2021)). On March 1, 2021, the Service filed with the Court our plan to release red wolves into the NC NEP. On April 14, 2021, the Court issued an order directing the Service to immediately implement that release plan.

## **Background**

On April 13, 1995, we published in the *Federal Register* (60 FR 18940) a final rule amending the regulations at 50 CFR 17.84(c) for the nonessential experimental populations of red wolves in North Carolina and Tennessee. Since that time, the NC NEP has been managed under the regulations set forth in the April 13, 1995, final rule at 50 CFR 17.84(c). On June 28, 2018, we published in the *Federal Register* (83 FR 30382) a proposed rule to replace those existing regulations. The purpose of the proposed rule was to incorporate the most recent science and lessons learned related to the management of red wolves to further the conservation of the species. We proposed to establish a more manageable wild population that would allow for more resources to support the captive population component of the red wolf program (which is the genetic fail safe for the species), serve the future needs of new reintroduction efforts, retain the influences of natural selection on the species, eliminate regulatory burden on private landowners, and provide a population for continued scientific research on wild red wolf behavior and population management.

The June 28, 2018, rule proposed to:

- Establish an NC NEP management area to include Alligator River National Wildlife Refuge (NWR) and the Dare County Bombing Range. A small group (i.e., one or two packs likely consisting of fewer than 15 animals) of red wolves would be maintained in the NC NEP management area and actively managed under the RWAMWP.
- Specify that the primary role of the NC NEP would be to provide a source of red wolves that are raised in, and adapted to, natural conditions for the purpose of facilitating future reintroductions.
- Not prohibit take of red wolves on private lands and non-Federal public lands outside of the NC NEP management area.

### **Withdrawal of Proposed Rule**

During the two comment periods on the June 28, 2018, proposed rule, we received more than 16,000 public comments. Of those, more than 99 percent of the comments opposed the proposed rule and recommended greater conservation efforts for red wolves in the NC NEP. In general, commenters were concerned about the reduction in the size of the NEP area and lack of take prohibitions on private and non-Federal lands outside the NC NEP management area; many commenters asserted that the proposed rule did not further the conservation of the red wolf. Additionally, many commenters recommended that the rule include measures for improving working relationships with private landowners and other stakeholders, and foster increased tolerance of red wolves on private lands.

After fully considering the recent court decisions involving the NC NEP discussed above under *Legal Actions* and concerns raised in the comments we received in response to the June 28, 2018, proposed rule, we are withdrawing the June 28, 2018, proposed rule. We will manage the NC NEP under the existing regulations at 50 CFR 17.84(c), as informed by relevant court orders, which include authority to release captive red wolves and conduct adaptive management. The NC NEP will continue to encompass the five counties of the Albemarle Peninsula in North Carolina (Beaufort, Dare, Hyde, Tyrrell, and Washington Counties). Furthermore, the Service

currently has a permit from the North Carolina Wildlife Resources Commission (which regulates take of coyotes) authorizing the Service to conduct coyote sterilization on Federal lands and non-Federal lands with the written consent of the landowner within the five-county NC NEP.

Authorized take will be limited to protection of oneself or others from potential harm, protection of livestock or pets in immediate danger, and unintentional take. Otherwise, take prohibitions under section 9 of the Act will be enforced. While we remain concerned that the existing regulations at 50 CFR 17.84(c) may not provide some private landowners and stakeholders with the management flexibility sufficient to improve tolerance of red wolves, we continue to work with stakeholders to identify ways to foster more effective coexistence between people and wolves. For example, the Service has implemented a new project under its Partners for Fish and Wildlife Program, Prey for the Pack, which is intended to improve these relationships and create a more supportive environment for conservation of red wolves. Through this program, the Service works with willing private landowners within the NC NEP to provide funding and technical assistance to restore and enhance habitat on private lands to benefit red wolf prey species (e.g., white-tailed deer, rabbits) in exchange for landowner willingness to tolerate red wolf use of their property and to provide the Service access to conduct red wolf management activities. We will continue to work with our partners and stakeholders to establish the support necessary for red wolf conservation.

### **Authors**

The primary authors of this rule are the staff members of the Service's South Atlantic-Gulf Interior Region.

### **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

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**Martha Williams**

*Principal Deputy Director*

*Exercising the Delegated Authority of the Director*

*U.S. Fish and Wildlife Service*

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